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In re Application of
KEMP et al.
Application No.: 10/589,150
PCT No.: PCT/GB05/00511
Int. Filing Date: 14 February 2005
Priority Date: 13 February 2004
Attorney's Docket No.: 50393/007001
For: WOUND HEALING PROFILE

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: DECISION ON
:
: PETITION
:
: UNDER 37 CFR 1.47(a)
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This is in response to the petition under 37 CFR 1.47(a), filed 12 FEBRUARY 2007, to permit the applicant to file the above-captioned application on behalf of the non-signing inventor, Dr. Margaret Batten. The petition under 37 CFR 1.47(a) is DISMISSED.

BACKGROUND

On 14 February 2005, applicant filed international application PCT/GB05/00511, which claimed priority to numerous earlier US and GB patent applications, the earliest being GB 0403226.4 and GB 0403220.7 and, having a common filing date of 13 February 2004.

On 11 August 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, as required under 35 U.S.C. 371(c), the requisite basic national fee, search fee and examination fee, a copy of the international application, the requisite priority documents and an unexecuted oath or declaration with a surcharge of \$130.00, required under 37 C.F.R. 1.17(m), for filing the oath and declaration later than 30 months from the priority date.

On 09 February 2007 applicant filed the present petition, accompanied by a petition fee, a declaration executed by inventors, Paul Kemp, Gyorgyi Talas, Jennifer Sutherland, Penelope Ann Johnson, Andrew Shering and Michael McWhan and, a statement by Ms. Teresa Shering.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and

(4) an oath or declaration by each applicant on his or her own behalf and on behalf of the non-signing joint inventor. A review of the papers reveals that applicant has satisfied items (1), (3) and (4).

As to item (3), the evidence to show that Dr. Margaret Batten has refused to sign is insufficient. Although the statement of Ms. Shering indicates that numerous attempts were made to contact Dr. Margaret Batten, including postal mail, telephone, personal e-mail, Internet searching, contacting her former employer and her boyfriend, the statement does not indicate that a complete copy of the application was sent to Dr. Margaret Batten. The statement of Ms. Shering does not set forth any facts that a complete set of application papers were presented to Dr. Margaret Batten and that she refused to sign the papers. Furthermore, the statement does not identify the international application for which Ms. Shering is requesting Dr. Batten's signature on the oath or declaration. Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature. Copies of documentary evidence such as a certified mail return receipt, cover letter of instructions, telegrams, etc., which support a finding that a complete copy of the application papers had been sent to the applicant should be made a part of the declaration or affidavit.

Furthermore, it is not clear from Ms. Shering's statement whether she actually tried to contact Dr. Margaret Batten employing the listed methods, *e.g.*, postal mail, telephone, personal e-mail, Internet searching, contacting her former employer and her boyfriend. Ms. Shering has not clearly indicated in her statement that she has firsthand knowledge of the facts. Therefore, in the instant case, Ms. Shering's statement should be clear as to whether she actually tried to contact Dr. Margaret Batten.

CONCLUSION

Applicant's petition under 37 CFR 1.47(a) to permit the applicant to file the above-captioned application on behalf of the non-signing inventor, Dr. Margaret Batten, is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.



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